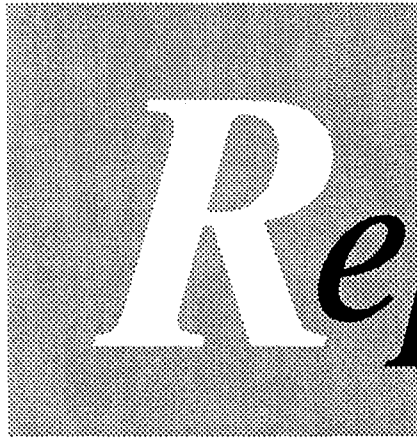




Audit



Report



BALLISTIC MISSILE DEFENSE ORGANIZATION TECHNOLOGY
SELECTION PROCESS FOR THE DISCRIMINATING INTERCEPTOR
TECHNOLOGY PROGRAM LASER RADAR

Report No. D-2000-061

December 17, 1999

Office of the Inspector General
Department of Defense

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Acronyms

ADI	Advanced Discriminating Interceptor
ASTP	Advanced Sensor Technology Program
BMDO	Ballistic Missile Defense Organization
CAAS	Contract Advisory Assistance Services
DITP	Discriminating Interceptor Technology Program
IET	Independent Evaluation Team
LADAR	Laser Radar
SETA	Scientific and Engineering Technical Analysis
SMDC	Space and Missile Defense Command
TDC	Technology Development Corporation



**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884**

December 17, 1999

**MEMORANDUM FOR DIRECTOR, DEFENSE PROCUREMENT
DIRECTOR, BALLISTIC MISSILE DEFENSE
ORGANIZATION**

**SUBJECT: Audit Report on the Ballistic Missile Defense Organization Technology
Selection Process for the Discriminating Interceptor Technology Program
Laser Radar (Report No. D-2000-061)**

We are providing this audit report for review and comment. This audit was requested by Congressman Bud Cramer. We considered management comments on a draft of this report in preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Ballistic Missile Defense Organization's comments are responsive. We request that the Director, Defense Procurement, provide additional comments on Recommendation 2. We request that management provide additional comments by February 17, 2000.

We appreciate the courtesies extended to the audit staff. Questions on this audit should be directed to Mr. Garold E. Stephenson at (703) 604-9332 (DSN 664-9332) or Mr. Eric B. Edwards, at (703) 604-9219 (DSN 664-9219). See Appendix D for the report distribution. Audit team members are listed on the inside back cover.

A handwritten signature in black ink that reads "Robert J. Lieberman".

Robert J. Lieberman
Assistant Inspector General
for Auditing

Office of the Inspector General, DoD

Report No. D-2000-061
(Project No. 9CH-5040)

December 17, 1999

Ballistic Missile Defense Organization Technology Selection Process for the Discriminating Interceptor Technology Program Laser Radar

Executive Summary

Introduction. We conducted the audit in response to a request from Congressman Bud Cramer to review a constituent complaint that the Ballistic Missile Defense Organization did not fairly conduct the technology selection process for the Discriminating Interceptor Technology Program laser radar.

Objectives. The overall audit objective was to determine the validity of a complaint concerning the Ballistic Missile Defense Organization technology selection process for laser radar technology for the Discriminating Interceptor Technology Program. The specific audit objectives were to examine the composition and operation of the independent evaluation team, and to determine whether the Ballistic Missile Defense Organization complied with applicable laws and regulations regarding the use of consultants and contract advisory and assistance services. The audit also reviewed the adequacy of the management control program as it related to the audit objectives.

Results. The selection process used by the Ballistic Missile Defense Organization for the Discriminating Interceptor Technology Program laser radar technology demonstration funding was fair and objective. However, the Ballistic Missile Defense Organization had not ensured that one independent evaluation team member executed the appropriate nondisclosure agreement, as stipulated in the technology selection plan, or ensured that independent evaluation team members had been screened regarding any financial interests in the competing contractors. The failure to obtain the nondisclosure agreement and the absence of a financial disclosure policy for contractor employees providing advisory and assistance services increased the risk for misuse of contractor proprietary information and a conflict of interest involving an independent evaluation team member. Further, the Ballistic Missile Defense Organization program office did not formally coordinate implementation of the technology selection plan, which was essentially a contract administration action, with the Ballistic Missile Defense Organization contracting personnel and legal counsel. The inadequate coordination may have contributed to the Technology Development Corporation's perception that the technology selection plan was conducted unfairly. See the Finding section for details on the audit and Appendix A for details on the management control program.

Summary of Recommendations. We recommend that the Director, Ballistic Missile Defense Organization, obtain the appropriate nondisclosure agreement and a certification that any proprietary information that was received has not been improperly disclosed or used except for the purposes for which the information was provided. We also recommend that the Director, Defense Procurement, task the Defense Acquisition Regulatory Council to initiate a case to amend the Federal Acquisition Regulation to

require Government contractors providing advisory and assistance services to screen their employees for financial interests that could disqualify the employee from participation in potential tasks.

Management Comments. We received comments from the Acting Director, Defense Procurement, and the Director, Ballistic Missile Defense Organization. The Director, Ballistic Missile Defense Organization, concurred with the recommendation to obtain the nondisclosure agreement and certification. The Acting Director, Defense Procurement, nonconcurred with the recommendation to initiate a case to amend the Federal Acquisition Regulation, indicating such a requirement would be at variance with commercial practice, burdensome and unjustified because no widespread abuse has been detected. A discussion of the management comments is in the Finding section of the report, and the complete text is in the Management Comments section.

Audit Response. The Acting Director, Defense Procurement comments were nonresponsive. Screening employees to avoid potential conflicts of interest would serve the best interest of both the contractor and the DoD, would not necessarily present a burden, and would constitute a reasonable preventative measure. We request that the Director, Defense Procurement reconsider his position and provide additional comments on the final report by February 17, 2000.

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Background

This audit was conducted in response to a request by Congressman Bud Cramer on November 30, 1998, on behalf of the Technology Development Corporation (TDC). TDC alleged that the selection process for the Discriminating Interceptor Technology Program (DITP) Laser Radar was conducted unfairly by the Ballistic Missile Defense Organization (BMDO). Specifically, TDC alleged that the independent evaluation team (IET) that BMDO created to evaluate the DITP contained contractors; some of the IET members were paid by, or directly worked for, the organizations pursuing one of the competing technologies; the briefings to the IET were required with little notice; and questions submitted concerning the selection process were not answered in a fair and equitable manner. Further, TDC stated that it was led to believe that the selection process was for demonstration only, not to select one laser radar (LADAR) technology and to terminate the development of other LADAR technologies. Appendix B provides detailed information on the allegations. Table 1 identifies the contractors, contract numbers, and funding for the DITP LADAR program.

Table 1. Contracts for DITP LADAR Program (as of March 1998)	
<u>Contractor/Contract Number</u>	<u>Total (in millions)</u>
Fibertek, Inc. (N66001-98-C-0021)	\$9.38
Hughes Missile Systems Company (DASG60-95-C-0026)	\$8.23
Technology Development Corporation (DASG60-96-C-0154)	\$18.92

Ballistic Missile Defense Organization. The BMDO manages, directs, and executes the Ballistic Missile Defense Program, which includes theater missile defense, national missile defense, and advanced ballistic missile defense technologies. The BMDO mission includes developing techniques for fielding effective military defenses against ballistic missiles. To accomplish its mission, BMDO:

- provides central ballistic missile defense management,
- defines systems architecture and design,
- integrates requirements and technology,
- develops budgets and allocates resources,
- ensures integration with other U.S. and international defense capabilities,

- ensures systems are interoperable, and
- coordinates Theater Missile Defense with National Missile Defense programs and systems.

Brief History of DITP. In 1992, BMDO initiated the Advanced Discriminating Interceptor (ADI) program with the goal of providing seeker technology for pre-planned product improvements to the Ground Based Interceptor program. In 1993, BMDO descope the ADI efforts to focus only on LADAR transmitter development because of reductions in LADAR technology funding. LADAR enhances ballistic missile defense capabilities both strategically and tactically. Basic optical short wavelength operation of the laser provides precision range, angular and doppler data for target location, tracking, and identification of threatening vehicles. The narrow beamwidths provide both the antenna gain to permit long range operation in a compact package, and coverage against threats close to the ground. In 1994, BMDO and the Space and Missile Defense Center (SMDC) agreed to pursue development of the Advanced Sensor Technology Program (ASTP). As an adjunct to the ASTP, BMDO and SMDC initiated the DITP to increase the ability of missile interceptor seekers to discriminate reentry vehicles from decoys and countermeasures in the exoatmosphere. Appendix C provides detailed information on the chronology of events. Table 2 describes the funding history of the ASTP and the DITP.

Table 2. ASTP/DITP Funding
(FYs 1995 through 1999)
(in millions)

	<u>FY 1995</u>	<u>FY 1996</u>	<u>FY 1997</u>	<u>FY 1998</u>	<u>FY 1999</u>	<u>Total</u>
ASTP	\$.91	\$2.92	\$3.34	\$0	\$0	\$7.17
DITP	\$.68	\$4.22	\$5.69	\$12.87	\$6.09	\$29.55

Guidance on Service Contracting. Federal Acquisition Regulation (FAR), part 37, "Service Contracting," prescribes general policy and procedures for acquiring services by contract. The regulation distinguishes between personal services and nonpersonal services contracts, and includes special conditions that should be observed when acquiring contract advisory and assistance services.

Objectives

The overall audit objective was to determine the validity of a complaint concerning the BMDO technology selection process for LADAR technology for the DITP. The specific audit objectives were to examine the composition and operation of the IET, and to determine whether BMDO complied with applicable laws and regulations regarding the use of consultants and contract advisory and assistance services. The audit also reviewed the adequacy of the management control program as it related to the audit objectives.

Implementation of the Technology Selection Plan

The selection process used by BMDO for the DITP LADAR technology demonstration funding was fair and objective. However, BMDO had not ensured that one IET member executed the appropriate nondisclosure agreement as stipulated in the technology selection plan (TSP), or ensured that IET members had been screened regarding any financial interests in the competing LADAR contractors. Also, BMDO had not formally coordinated implementation of the TSP, with BMDO contracting personnel and legal counsel. The inadequate coordination may have contributed to the perception of the Technology Development Corporation (TDC) that the TSP was unfair. These conditions occurred because BMDO program managers for the DITP LADAR had not placed sufficient emphasis on adequate safeguards over personnel assignments for the IET, and because the FAR did not require that contractors who provided advisory and assistance services to maintain a written and enforced employee conflict of interest policy. As a result, the failure to obtain the nondisclosure statement and the absence of a financial disclosure policy for contractor employees providing advisory and assistance services increased the risk for misuse of contractor proprietary information and a possible conflict of interest involving an IET member.

Technology Selection Plan

Purpose. The TSP is a written plan that describes the process that BMDO utilized to select the active-passive sensor technology for integrated ground and flight demonstrations for the DITP, beginning in FY 2001. The plan was developed to assist BMDO to select one of the three laser radar (LADAR) technologies for technology demonstration funding. BMDO had funds to complete one demonstration instead of three. Thus, BMDO went through the process of evaluating technologies to determine which of the three would obtain demonstration funding. The TSP was an attempt to evaluate and prioritize efforts of three LADAR technologies independently developed by separate contractors.

BMDO originally planned to select the demonstration contractor in September 1998. BMDO rescheduled the selection date to March 31, 1998, to allow contractors involved in the development of LADAR to respond to a request for proposal for the sensor integration effort. BMDO program managers for the DITP determined that organizational conflict of interest laws would preclude contractors already involved in the DITP from submitting a proposal for the integration portion of the sensor program. The three competing contractors working on the active-passive sensor technology, each developing its own LADAR, were Fibertek, Hughes, and TDC.

The TSP requires the three contractors to present the status of their respective LADAR technology. The presentations, which the contractors provided on March 19, 1998, included component-level performance, physical and interface

characteristics, cost, schedule, risk, and other data, as described in the TSP. Contractors made oral presentations to the IET, and after the presentations, the IET ranked the LADAR technologies and provided the results to the BMDO DITP Program Integrator and BMDO DITP Technical Advisor. The program integrator and the technical advisor then recommended to the BMDO, Director of Advanced Technology that Fibertek be selected as the demonstration contractor because it had the most mature system. On March 31, 1998, the Director of Advanced Technology selected Fibertek as the DITP demonstration contractor.

Composition of the IET. BMDO established the IET to determine which DITP LADAR technology was the most mature for the demonstration. BMDO assigned four contractor employees and one Government employee to the IET. Table 3 lists the IET members, their employing organizations, and cost of participation.

Table 3. Members of the IET for the DITP TSP

<u>Member</u>	<u>Employer</u>	<u>Cost of Participation</u>
A	Schafer	\$27,886
B	SAIC	17,336
C	SAIC	15,410
D	Scientific Simulation, Inc.	9,678
E	Air Force Materiel Command	<u>3,904</u>
Total		\$74,214

Note: No member was designated to chair the IET.

Contractor Members. BMDO selected four of the IET members from contractors providing scientific and engineering technical analysis (SETA) services to BMDO and an Air Force Executing Agent on the ASTP and DITP. One member was an employee of Schafer Corporation, a BMDO prime contractor for SETA services. Two members were employees of SAIC, a subcontractor to the ANSER Corporation, another BMDO prime contractor for SETA services. The fourth member was an employee of Scientific Simulation, Inc., which was a prime contractor with the Air Force Materiel Command Rome Laboratory, an Air Force Executing Agent for the BMDO program.

BMDO chose the four contractor employees for their expertise in the field and because they were able to serve for the entire period of the IET.

Requirements for Nondisclosure Agreements. The FAR, subpart 9.5, “Organizational and Consultant Conflicts of Interest,” provides contracting officers with guidance to identify, evaluate, and resolve organizational conflicts of interest. According to FAR 9.501, an organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable, or potentially unable, to render impartial assistance or advice to the Government; or the person’s objectivity in performing the contract work is or might otherwise be impaired, or a person has an unfair competitive advantage. FAR 9.505-4(b) states, a contractor that gains access to proprietary information of other companies in performing advisory and assistance services for the Government must agree with the other companies to protect their information from unauthorized use for as long as it remains proprietary; and refrain from using the information for any purpose other than that purpose for which it was furnished. FAR 9.505-4(b) further requires that the contracting officer obtain copies of the agreements and ensure that they are properly executed. The TSP for the DITP stated that IET members will execute and maintain appropriate nondisclosure agreements to safeguard proprietary or competition sensitive data. However, BMDO program managers for the DITP did not obtain an agreement from “Member D” regarding nondisclosure and nonuse of contractor proprietary data.

Contract F30602-96-C-0071, which funded services on the IET for Member D, contained Defense Federal Acquisition Regulation Supplement clause 252.204-7000, “Disclosure of Information.” This clause states that the contractor cannot release outside its own organization, any unclassified information it receives pertaining to the contract or any program data related to the contract, without the contracting officer’s written approval. However, the clause does not preclude the contractor from using the information for their own purposes. The absence of an appropriate agreement with “Member D” increased the risk of misuse of contractor proprietary data.

Disclosure of Financial Interests. BMDO program managers did not determine or receive any assurances that the four contractor employees on the IET had no financial interest in the three contractors competing for demonstration funding. These assurances did not occur because there were no procedural requirements in place to identify the presence of such financial interests. Neither FAR subparts 9.5 nor 37.2 currently require contractors providing advisory and assistance services to the Government to establish an ethics program with respect to employee conflicts of interest. However, several Federal agencies have issued guidance requiring private sector organizations to identify any actual or potential conflicts of interest that may be presented by a financial interest of an employee working on a Federally sponsored project. For example, the National Science Foundation requires all institutions receiving research grants that employ more than 50 persons to have a policy on conflict of interest. Chapter V, section 510, of the National Science Foundation Grant Policy Manual describes the requirements of the conflict of interest policy that grantee institutions should establish. The Public Health Service and the Food and Drug Administration have also issued financial disclosure regulations. In addition, all members of Federal Advisory Committees appointed as special

Government employees are required under the Ethics in Government Act, as amended by the Ethics Reform Act of 1989, and title 5, Code of Federal Regulations, part 2634 to file a financial disclosure report when first appointed. The reported information is used to determine matters for which a committee member must be disqualified under the criminal financial conflict of interest statute, section 208(a), title 18, United States Code (18 U.S.C. 208[a]), and the matters for which a committee member may be granted a waiver under 18 U.S.C. 208(b). This statute also prohibits employees of the Executive Branch from participating personally and substantially in an official capacity in any matter in which the employee has a financial interest.

Individuals employed under personal services contracts are covered by Federal ethics laws that apply to direct hire employees and are required under certain conditions to disclose their financial interests. Given the plethora of contractors and subcontractors providing advisory and assistance services to the Government, and the need to ensure the impartiality and the appearance of impartiality of contractor employees providing the services, we believe that the Defense Acquisition Regulatory Council should initiate a case to amend the FAR. The amendment should require Government contractors providing the following types of advisory and assistance services to establish an employee conflict of interest policy.

- Assistance in contract management (such as where the contractor might influence official evaluations of the contractor).
- Technical evaluations of contractor proposals.
- Assistance in the development of statements of work.
- Services in support of acquisition planning.
- Services that involve, or relate to, the evaluation of another contractor's performance.
- Services that permit, or might permit, access to confidential business information and/or other sensitive information.

As of August 1999, a DoD Task Force on Ethics Issues in Government Contractor Teambuilding, under the direction of the Office of General Counsel, DoD, was reviewing standards of conduct issues involving defense contractors. However, the DoD Task Force indicated that it would not address the issue of contractor responsibilities with respect to screening employees for potential conflicts of interest.

BMDO Contracting and Legal Review of Technology Selection Plan.

BMDO program personnel did not formally coordinate with BMDO contracting and legal personnel on the selection of the demonstration contractor for the DITP LADAR. We believe coordination of the TSP by DITP program managers might have precluded the perceptions of unfairness by TDC. The TSP was not a source selection, or a down selection, but a contract administration action that curtailed or eliminated work under the terms of the contracts, and source selection principles did not apply. All three contracts

were cost contracts that included limitation of funds and termination provisions that gave the Government authority to curtail or eliminate work. The contracts included demonstration or demonstration related tasks as part of their requirements, and did not add work beyond the scope of the original contract awards. See Appendix B for a discussion of the TDC allegations.

Recommendations, Management Comments and Audit Response

1. We recommend that the Director, Ballistic Missile Defense Organization, obtain the appropriate nondisclosure agreement from Scientific Simulation, Inc., and a certification that any proprietary information that it or its employees have received has not been improperly disclosed or used except for the purposes for which the information was provided.

Management Comments. The Director, Ballistic Missile Defense Organization (BMDO), concurred stating that BMDO obtained the appropriate nondisclosure agreement and certification from Scientific Simulation, Inc. on November 15, 1999.

2. We recommend that the Director, Defense Procurement, task the Defense Acquisition Regulatory Council to initiate a case to amend the Federal Acquisition Regulation to require Government contractors providing advisory and assistance services to screen employees for financial interests that could disqualify the employees from participation in potential tasks.

Management Comments. The Acting Director, Defense Procurement, did not concur stating the requirement would be burdensome and potentially costly for contractors providing advisory and assistance services and is inconsistent with acquisition reform initiatives to avoid placing burdens on contractors that they would not encounter in the commercial marketplace. The Director further stated that the report did not establish that there is a systemic problem that requires correction and did not present evidence to show any harm was done to the Government, or that the employees had conflicts of interest that resulted in an unfair competitive advantage.

Audit Response. We continue to believe that the recommendation is appropriate. We do not agree that the recommendation would impose a burdensome and potentially costly requirement on contractors. Contractors may suffer more serious consequences as a result of their employees' actions. A violation of the conflict of interest provision may lead to cancellation or termination of a contract. Furthermore, Government contracts are different from contracts formed between private parties. An essential consideration in every aspect of the Federal Acquisition System is maintaining the public's trust. Participants in the acquisition process must conduct business with integrity. Contractors providing advisory and assistance services may be tasked to perform analyses or to provide support that influences the acquisition process. The intent of the recommendation is for the Defense Acquisition Regulations Council, which is composed of policy and legal representatives from the

Military Departments, the Defense Logistics Agency, and the National Aeronautics and Space Administration, to formulate a proposed revision to the Federal Acquisition Regulation. The council would examine the issue from a senior-service/agency perspective, determine the cost or administrative impact on contractors, and write a draft change to the Federal Acquisition Regulation. The process formulated by the council would consider the views of agencies and nongovernmental parties or organizations when formulating the rule change. We request that the Director reconsider his position on the recommendation in response to the final report.

Appendix A. Audit Process

Scope

We conducted this program audit from February through November 1999 and reviewed documents dated from May 1996 through November 1999. To accomplish our objectives we:

- reviewed the congressional allegations to determine their validity;
- examined the BMDO TSP that pertained to the establishment of the independent evaluation team for the DITP Program;
- determined BMDO compliance with statutory and regulatory requirements for the procurement of advisory and assistance services;
- discussed issues related to the independent evaluation team (IET) from BMDO.

DoD-Wide Corporate Level Government Performance and Results Act

Goals. In response to the Government Performance Results Act, the DoD has established 6 DoD-Wide corporate level performance objectives and 14 goals for meeting the objectives. This report pertains to achievement of the following objective and goal:

Objective: Prepare now for an uncertain future. **Goal:** Pursue a focused modernization effort that maintains U.S. qualitative superiority in key war fighting capabilities. **(DoD-3)**

General Accounting Office High-Risk Area. The General Accounting Office has identified several high-risk areas in the Department of Defense. This report provides coverage of the Defense Contract Management high-risk area:

Methodology

Audit Type, Dates, and Standards. We conducted this program audit from February through November 1999 in accordance with auditing standards issued by the Comptroller General of the United States, as implemented by the Inspector General, DoD, and accordingly included such tests of management controls as we deemed necessary. We did not rely on computer-processed data to support our finding and recommendations.

Contacts During the Audit. We visited or contacted contractors and individuals and organizations within the DoD. Further details are available upon request.

Management Control Program

DoD Directive 5010.38, "Management Control Program," August 26, 1996, requires DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended to evaluate the adequacy of the controls.

Scope and Review of Management Control Program. We reviewed the management controls BMDO used to establish the IET. In addition, we evaluated the procedures BMDO followed to identify, evaluate and resolve potential conflicts of interest among members of the IET. Because we did not identify a material weakness, we did not assess management's self-evaluation.

Adequacy of BMDO Management Controls. The management controls were adequate as they applied to the overall objective.

Summary of Prior Coverage

Within the last 5 years, there has been one audit report directly related to the audit objective. Inspector General, DoD, Report No. 94-174, "Organizational and Consultant Conflicts of Interest," August 10, 1994.

Appendix B. Summary of Allegations and Audit Results

The allegations and a summary the audit results pertaining to each allegation are provided below.

Allegation 1. Four of the five members of the IET were contractor employees.

Results. The allegation was substantiated, but there was no material effect. Four contractor employees were members of the IET, as discussed in the finding.

The DITP Program Integrator and the DITP Technical Advisor, both BMDO officials, selected the IET members based on their expertise with LADAR development. The TSP discussed the composition of the IET that was approved by the Director of Advanced Technology.

Allegation 2. Some IET members were paid by or worked directly for organizations pursuing the DITP technology. One contractor member was employed from April to December 1996 by Schafer Corporation, a former Navy subcontractor to Thermotrex Corporation, for the .53 LADAR development.

Results. The allegation was not substantiated. Schafer Corporation, the employer of IET Member A, also employed another individual, who performed work (independent of Member A) for Fibertek, the contractor BMDO selected for the DITP demonstration technology. Member A never worked for any projects involving Fibertek, and we found no evidence of any discussions between the two employees regarding the Fibertek contract. Both SAIC employees served on the IET under a subcontract with ANSER Corporation, which had a scientific engineering and technical analysis (SETA) contract with BMDO. Member D served on the IET under a SETA contract with the Air Force Rome Laboratory.

Allegation 3. Briefings to the IET were required with little notice. BMDO gave TDC and the other contractors working on the DITP sensor development about 4 weeks notice to prepare detailed briefings on their technology.

Results. The allegation was substantiated, but all contractors received the same time to prepare for the briefings. BMDO originally planned the DITP technology demonstration presentations for September 1998. BMDO moved up the presentation date to March 1998 because of an organizational conflict of interest pertaining to laws and mergers. This conflict potentially eliminated contractors from the competition for the integrated system. This conflict occurred because all of the companies that were being considered for the larger integration contract were involved in developing parts of the DITP, and BMDO legal counsel and contracting personnel advised that this could result in an organizational conflict of interest. Each of the three contractors had worked in

the LADAR technology area since 1996 or earlier, and were familiar with the program and its requirements. All three contractors were given about 4 weeks to prepare for the presentations.

Allegation 4. Questions submitted concerning the TSP selection process were not answered in a fair and equitable manner. TDC was led to believe that the selection process was for demonstration only, not to stop the development of the other technologies. TDC protested the composition of the IET and BMDO refused to change the panel.

Results. The allegation was not substantiated. All contractors received copies of the responses to all questions and had access to the questions and answers of the other contractors. Some answers appeared to be more detailed than others, but this may have been caused by different respondents and writing styles. All responses were issued through the executing agents at the same time. BMDO officials contend that all contractors knew that the Government planned to descope to one technology for demonstration purposes because of funding limitations, and that research and development of the others would continue to the extent funding was available. TDC, in a March 30, 1998, letter from the TDC lawyer to Congressman Cramer's legislative aide, claimed that TDC had formally protested the composition of the IET after BMDO had appointed the IET members. The letter further stated BMDO refused to change the panel. However, BMDO officials stated they learned about the TDC concerns with the IET composition from SMDC officials. We found no evidence of a formal written protest by TDC to either SMDC or BMDO.

Allegation 5. The SMDC contracting officer for the TDC LADAR development contract believed that the meeting of the IET on DITP technology selection violated Government contract laws, and notified TDC that expenses incurred by TDC for this meeting were not valid contract costs and would be disallowed.

Results. The allegation was not substantiated. The contracting officer at SMDC did consider the TSP to be an improper down-select, and did direct that TDC could not be paid. TDC never submitted reimbursement costs because the contracting officer said that they would not get reimbursed. The other two companies were paid travel expenses to demonstrate their LADAR for the IET. However, in its complaint, TDC did not request reimbursement of expenses incurred to demonstrate its LADAR. Because of funding limitations, BMDO was only able to fund one demonstration of the three LADAR technologies in development. BMDO had program management authority to determine the status of the technology development efforts and control funding levels for the LADAR development, for which SMDC was a support contracting organization. The TSP process was designed to determine the most mature technology for demonstration purposes. There was no evidence that BMDO committed any impropriety in selecting Fibertek's DITP technology for demonstration purposes, or that the TSP process was flawed or illegal. Furthermore, TDC could provide briefings regarding the status of its technology development to the IET, as its contract contained a provision requiring oral and written briefings of work in progress.

The TSP did not require that work be discontinued on nonselected contracts. Each contractor continued to receive development funding under its respective contract, although two of the contractors would be funded at a reduced level in FY 2000. The technology assessment was necessitated because of BMDO funding constraints and the need to prioritize efforts, and the inability to fund a demonstration for all three technologies. While the LADAR technologies were being developed by separate contractors, the purpose of the TSP was not to select a contractor or team, but rather a LADAR technology that would receive the limited funding available for demonstration. The TSP was not a mechanism to provide additional work.

The contracts included demonstration or demonstration related tasks as part of their requirements, and did not add work beyond the scope of the original contract awards. Fibertek already had a contract to develop and fabricate its LADAR solution. The Fibertek contract included requirements for developing, designing, fabricating and testing of a single sensor. The TDC contract contained similar requirements to include demonstration of its LADAR. Fibertek was essentially being funded to continue its effort.

Appendix C. Chronology of Events

- 1992 - BMDO initiated the Advanced Discriminating Interceptor (ADI) program, with the goal of providing technology for preplanned product improvements to the Ground Based Interceptor program.
- 1993 and 1994 - BMDO descope the ADI efforts to focus only on laser radar (LADAR) transmitter development because of reductions in the funding for technology development.
- 1994 - BMDO and SMDC agreed to pursue development of the Advanced Sensor Technology Program (ASTP). As an adjunct to the ASTP, BMDO and SMDC initiated DITP in 1994, as an effort to increase the ability of missile interceptor seekers to discriminate reentry vehicles from decoys and countermeasures in the exoatmosphere.
- 1994 - BMDO and three Military Departments jointly performed a survey of advanced technology, culminating in selection of the solid-state Fibertek LADAR, the Hughes/Raytheon fiber LADAR, and the Technology Development Corporation (TDC) LADAR for funding. BMDO managed the LADAR technology effort, with SMDC as the executing agent.
- 1996 - The initial schedule called for a technology selection in FY1999, in order to support the first flight demonstration in FY 2002. However, deployment dates and the needs of the military defense acquisition programs caused the date of the first DITP flight test to be moved forward to FY 2001.
- Fall of 1997 - A combination of Defense mergers and the resulting potential organizational conflicts of interest necessitated an acceleration of the technology selection schedule to maintain the flight demonstration schedule. BMDO moved up the LADAR selection, which had been scheduled for September 1998, to March 1998.
- February 1998 - BMDO published the Technology Selection Plan (TSP), which outlined the selection process and formation of an independent evaluation team (IET).
- February 19, 1998 - The Program Integrator and Technical Advisor selected the IET.
- March 19, 1998 - Fibertek, Hughes/Raytheon, and TDC made oral presentations to the IET to demonstrate each company's abilities to supply the requisite LADAR technology.
- March 25, 1998 - The IET provided the results to the DITP Program Integrator and the Technical Advisor. The IET rated Fibertek (1), Hughes/Raytheon (2), and TDC (3).

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- March 27, 1998 - The program integrator and technical advisor recommended to the Director of Advanced Technology, that the Fibertek LADAR be selected as the demonstration technology.
 - March 30, 1998 - TDC contacted Congressman Bud Cramer's staff concerning composition of the DITP IET and BMDO's rejection of its protest to change the panel.
 - March 31, 1998 - The Director of Advanced Technology selected the Fibertek LADAR as the demonstration technology.
 - April 6, 1998 - Congressman Cramer requested BMDO to provide a full explanation of the down-select process.
 - April 28, 1998 - BMDO responded to Congressman Cramer, stating the DITP selection process was fair and that all the individuals involved acted in an appropriate manner.
 - July 27, 1998 - TDC contacted Congressman Cramer to complain about the DITP selection process.
 - July 27, 1998 - Members of the BMDO staff met with a member of Congressman Cramer's staff.
 - September 22, 1998 - BMDO again responded in writing to Congressman Cramer that the DITP selection process was fair and objective.
 - November 30, 1998 - Congressman Cramer requested that the Inspector General, DoD, evaluate the DITP selection process.

Appendix D. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Technology, and Logistics
 Director, Defense Procurement
 Director, Defense Logistics Studies Information Exchange
Under Secretary of Defense (Comptroller)
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Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on National Security, Committee on Appropriations
House Committee on Government Reform and Oversight
House Subcommittee on Government Management, Information and Technology,
Committee on Government Reform and Oversight
House Subcommittee on National Security, International Affairs, and Criminal
Justice, Committee on Government Reform and Oversight
House Committee on National Security
Honorable Bud Cramer, U.S. House of Representatives

Deputy Under Secretary of Defense Comments



ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

November 12, 1999

DP/CPA

MEMORANDUM FOR DIRECTOR, CONTRACT MANAGEMENT DIRECTORATE, DOD
INSPECTOR GENERAL

SUBJECT: Draft Audit Report on the Ballistic Missile Defense
Organization Technology Selection Process for the
Discriminating Interceptor Technology Program Laser
Radar (Project No. 9CH-5040)

This is in response to your memorandum of September 13,
1999, requesting comments on the findings and recommendations in
the subject draft report.

Please find attached our comments on the recommendation that
applies to Defense Procurement.

R.D. Kerrins, Jr.
COL, USA
Acting Director, Defense
Procurement

Attachment:
As stated

Coordination: *A Spruill* 11/15/99
Acquisition Resources & Analysis



**DODIG DRAFT AUDIT REPORT ON THE BALLISTIC MISSILE DEFENSE
ORGANIZATION TECHNOLOGY SELECTION-PROCESS FOR THE DISCRIMINATING
INTERCEPTOR TECHNOLOGY PROGRAM LASER RADAR
(PROJECT NUMBER 9CH-5040)**

**OFFICE OF THE UNDER SECRETARY OF DEFENSE (ACQUISITION,
TECHNOLOGY, & LOGISTICS)/DIRECTOR, DEFENSE PROCUREMENT**

COMMENTS ON RECOMMENDATION

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RECOMMENDATION 2: We recommend that the Director, Defense Procurement, task the Defense Acquisition Regulatory Council to initiate a case to amend the Federal Acquisition Regulation to require Government contractors providing advisory and assistance services to screen employees for financial interests that could disqualify the employees from participation in potential tasks.

DDP RESPONSE: Non-Concur. The draft audit report asks that burdensome and potentially costly requirements be imposed on all federal government contractors providing advisory and assistance services without establishing that there is a systemic problem which needs to be corrected. There is no evidence presented which shows that any harm was done to the government or that the employees in question actually had a conflict of interest which resulted in any unfair competitive advantage. An additional requirement, such as the one recommended, is inconsistent with our acquisition reform initiatives to avoid whenever possible placing burdens on contractors that they would not encounter in the commercial marketplace.

Ballistic Missile Defense Organization Comments



DEPARTMENT OF DEFENSE
BALLISTIC MISSILE DEFENSE ORGANIZATION
7100 DEFENSE PENTAGON
WASHINGTON, DC 20301-7100

TOS

November 29, 1999

MEMORANDUM FOR INSPECTOR GENERAL, DIRECTOR CONTRACT
MANAGEMENT

SUBJECT: Response to IG Audit Report, Project 9CH-5040

BMDO has reviewed the audit report on the BMDO Technology Selection Process for the Discriminating Interceptor Technology Program Laser Radar, Project 9CH-5040. BMDO concurs with the recommendations listed in the report. In response to the first recommendation, BMDO has obtained the appropriate nondisclosure agreement from Scientific Simulation Inc., and a certification that any proprietary information received has not been improperly disclosed or used except for the purposes for which the information was provided. This documentation was received on November 15, 1999.

A handwritten signature in cursive script, reading "Ronald T. Kadish".

RONALD T. KADISH
Lieutenant General, USAF
Director

CC:
BMDO/DGC

Audit Team Members

The Contract Management Directorate, Office of the Assistant General
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